No. 15,456

IN THE

United States Court of Appeals

For the Ninth Circuit

JOSEPH L. JOY, Trustee of the Estate of Miller Scraper & Mfg. Co., Inc., Bankrupt,

Appellant,

vs.

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION and CONSOLIDATED DISTRIBUTORS, INC., a corporation,

Appellees.

BRIEF OF APPELLEE BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION.

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BRIEF OF APPELLEE BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION.

I.

STATEMENT OF JURISDICTION.

This is an appeal by the Trustee in Bankruptcy from an order of the District Court reversing, in part, an order made by the Referee in Bankruptcy determining the nature, extent and validity of liens claimed by the Bank of America National Trust and Savings Association upon certain rotary scrapers

under statutory trust receipts. This Court has jurisdiction under the provisions of 11 U.S.C.A., Section 47, Subsection a, and General Orders in Bankruptcy 36 and 37, 11 U.S.C.A. following Section 53. The amount in controversy exceeds $500.00.

II.

STATEMENT OF QUESTION PRESENTED.

The ultimate question presented by this appellate proceeding is solely whether the provisions of Section 3440 of the California Civil Code, requiring a sale of personalty to be accompanied by an actual and continued change of possession of the personal property sold, can operate to invalidate trust receipt security transactions carried out in conformity with the Uniform Trust Receipts Law.

III.

STATEMENT OF FACTS.

Miller Scraper & Mfg. Co., Inc. (hereinafter referred to as "Miller"), is a corporate successor to Kenneth L. Miller, doing business as Miller Scraper Co. Miller was at all times herein referred to engaged in the business of manufacturing farm equipment, including a certain type of rotary scraper. Its plant was located near Selma, Fresno County, California.

On March 20, 1952, Miller entered into an agreement to sell all the scrapers it manufactured to In-

dustrial Equipment Co., Inc., a corporation subsequently known as Consolidated Distributors, Inc. (hereinafter referred to as "Consolidated"). Said agreement, as amended and supplemented by a later agreement (Tr. pp. 204-213), dated April 4, 1952, provided, so far as pertinent to this proceeding, as follows:

> "The Distributor [Consolidated] agrees to accept all production upon completion at the Yard of the Manufacturing Plant for the Manufacturer [Miller]; the Manufacturer and Distributor agree that all manufactured items are to be delivered to the Distributor F.O.B. Carrier at Selma, California, or are to be stored and/or warehoused at the Yard of the Manufacturer at the direction of the Distributor, and that, in either event, title thereof shall pass to the Distributor upon the occurrence thereof. * * *"

Pursuant to said agreement, Consolidated set up a elling organization, distinct and separate from Miller Tr. pp. 59-60, 79-81, 99), and rented an office in a portion of an office building located on the four-acre lot of ground which made up the Miller premises. There was a sign, approximately twelve by thirty-six nches large, on the front of this building indicating n letters three inches high that this was the office f Consolidated (Tr. pp. 60, 101). Delivery of the crapers by Miller to Consolidated began on or about April 1, 1952 (Tr. p. 85). A storage lot of approximately one acre in size comprising the southeast corer of the Miller land was graded and set aside as he place where Consolidated was to keep its scrapers.

As each scraper was parked by Miller on Consolidated's lot, it was immediately inspected by Consolidated and accepted or rejected, depending upon whether any mechanical defects were discovered (Tr. p. 87).

On the 1st and 15th of every month, Miller sent an invoice, made out to the Bank of America (hereinafter referred to as "Bank") to Consolidated. The invoice listed the particular scrapers that had been sold and delivered to Consolidated during that period. Consolidated in turn listed each scraper delivered and accepted by model, serial number, etc., on a statutory form of trust receipt (Tr. pp. 87-97). Consolidated took Miller's invoice with the accompanying trust receipt to Bank at its Selma Branch. Immediately upon delivery of the trust receipts to it, the Branch credited Miller's account with a sum equal to 90% of the invoice price of each scraper listed on the trust receipt.

Thereafter Consolidated sold the scrapers in the regular course of its business, upon notice to Bank and accounted to Bank for the proceeds of any such sale pursuant to the terms of the trust receipts. Bank and Consolidated properly filed the required statutory notice of trust receipt financing (Tr. pp. 48-49). All forty-two scrapers involved in this proceeding, which remained unsold at the time Miller was adjudicated a bankrupt in August, 1954, had been so produced, delivered, accepted, and placed under trust receipt prior to March 31, 1953.

In 1953, Miller defaulted in the payment of certain moneys loaned by Consolidated to Miller, resulting in several actions at law by Consolidated against Miller to collect the same. These accounts were settled by written agreement dated December 23, 1953, wherein Miller agreed to sell the scrapers remaining on Consolidated's lot and to account for the proceeds of said sales. Consolidated had moved from the premises of Miller in June, 1953, but continued to supervise the handling and the selling of the scrapers until the December, 1953, agreement. The sum of $43,884.00 had been paid by Bank and by Consolidated to Miller on account of these forty-two scrapers prior to Miller's adjudication in bankruptcy.

Between July, 1952, and September, 1954, a representative of Bank made regular monthly inspections of the scrapers on the above-mentioned lot for the sole purpose of seeing that said scrapers corresponded in every way with those listed and described on the trust receipts (Tr. p. 179).

Upon a petition of the Bankruptcy Receiver filed with the Bankruptcy Referee, the Referee issued his order requiring Consolidated and Bank to establish the nature, amount and validity of any claim against the bankrupt and any lien, claim or security upon the bankrupt estate. The Trustee objected to the granting of any such claims or liens by the Referee on the grounds that (1) title asserted by Consolidated in said scrapers was void as against the creditors of Miller in that there had been no immediate and con-

tinued change of possession from Miller to Consolidated pursuant to California Civil Code Section 3440; and (2) since under Civil Code Section 3440 the title of Consolidated was void, Consolidated could not pass good title to Bank, thus invalidating the alleged security interest of Bank in the scrapers under the trust receipts. The Referee denied the claims of Consolidated and Bank (Tr. pp. 11-16) holding that neither Consolidated nor Bank had any right, title or interest in any of the scrapers. Consolidated and Bank filed petitions to review the order of the Referee. The District Court, in reversing as to Bank (Tr. pp. 32-38), held that Bank's title and interest in the scrapers was not derivative from Consolidated, but that Bank's security interest had been acquired directly from Miller; therefore, compliance with the provisions of Section 3440 was not necessary. The District Court affirmed as to Consolidated (Tr. pp. 32-38).

ARGUMENT.

I.

THE DEALINGS BETWEEN BANK, CONSOLIDATED AND MILLER WITH REFERENCE TO THESE SCRAPERS CREATED A VALID TRUST RECEIPT TRANSACTION.

California Civil Code Section 3014 defines a trust receipt transaction in part as follows:

> "(1) A trust receipt transaction within the meaning of this chapter is any transaction to which an entruster and a trustee are parties, for one of the purposes set forth in subdivision (3) of this section, whereby

"(a) The entruster or any third person delivers to the trustee goods . . . in which the entruster (i) prior to the transaction has, or for new value (ii) by the transaction acquires or (iii) as the result thereof is to acquire promptly, a security interest; * * * provided, that the delivery under paragraph (a) . . .

"(i) Be against the signing and delivery by the trustee of a writing designating the goods . . . concerned, and reciting that a security interest therein remains in or will remain in, or has passed to or will pass to, the entruster, or

"(ii) Be pursuant to a prior or concurrent written and signed agreement of the trustee to give such a writing.

"The security interest of the entruster may be derived from the trustee or from any other person, and by pledge or by transfer of title or otherwise.

* * *

"(3) A transaction shall not be deemed a trust receipt transaction unless the possession of the trustee thereunder is for a purpose substantially equivalent to any one of the following:

"(a) In the case of goods . . . for the purpose of selling or exchanging, or of procuring the sale or exchange; * * *."

Clearly the arrangement which Bank had with Consolidated to finance the purchase of these scrapers from Miller fully conformed to the above definition of a trust receipt transaction. There is no question but that at the time Bank credited Miller's account with 90% of the listed value of the scrapers Bank

was giving new value, and that Consolidated signed and delivered to Bank shortly after the scrapers were delivered to Consolidated for the purpose of sale a written trust receipt describing the goods and reciting that a security interest therein was to remain in Bank.

There remains only the issue—did the delivery of the scrapers by Miller to Consolidated satisfy the requirement of delivery in Civil Code Section 3014 above? No decisions have been found under the Trust Receipts Act on this question, and it is believed the present case is one of first impression. However, whether there has been a delivery of goods is always a question of intent between the parties. See Civil Code Section 1738; *Peerless Motor Co. v. Sterling Finance Corp.,* 139 Cal.App. 621, 34 P. 2d 738 (1934). Nor, for that matter, is it essential that personal property be moved from one place to another in order to effect a delivery. A delivery is effected when the parties agree that control or dominion of the property is vested in the buyer and when the property is held at such a place as the buyer may designate. *Cownie v. Local Board of Review in and for City of Des Moines,* 235 Iowa 318, 16 N.W. 2d 592 (1944); *Van Drimmelen v. Converse,* 190 Iowa 1350, 181 N.W. 699 (1921). Certainly as far as Miller and Consolidated were concerned, there had been a full and complete delivery of these scrapers. The scrapers had been accepted by Consolidated and paid for by Bank they had been turned over to the absolute control and discretion of Consolidated, subject only to Bank's security interest under the trust receipts. Nor is there

any question about the good faith of all the parties involved. Such a delivery is surely sufficient to satisfy this requirement of Civil Code Section 3014.

Furthermore, the record indicates that the question of delivery was never an issue before either the Referee or the District Court. The questions and the testimony of the various witnesses assume time and again that there had been a delivery of the scrapers to Consolidated:

"Q. What happened after the last process was done on a particular scraper?

A. It was delivered to our lot.

Q. What happened then and where on the lot were they delivered? Where was the lot?

A. Our lot could be described as the Northeast portion of this piece of land that Miller set aside exclusively for the storing of Consolidated Distributors' equipment."

(Tr. p. 85).

"Q. And if these [i.e., the scrapers, the workmanship, etc.] were all found to be in good order, what was done?

A. The machine was received."

(Tr. p. 87).

"Q. And you did not accept delivery of the scrapers if they were in a defective condition?

A. We refused them."

(Tr. p. 105).

"A. * * * If we discovered that some of the working parts on a scraper were unacceptable, we would ask them to replace these parts and

this was done immediately and then we would accept the scrapers. * * *''

(Tr. p. 105).

"Q. So, on some occasions repairs would be made several days after delivery?

A. Yes.''

(Tr. p. 106).

"Q. And all of the articles with which we are concerned here were delivered before you left?

A. Yes.''

(Tr. p. 109).

"Mr. Bechtel. * * * These are the dates, are they not, that the scrapers were delivered to Consolidated Distributors?

A. Yes. They were usually delivered the day the invoice was received.

Q. It would be true then that the scrapers described in these Trust Receipts were delivered to Consolidated Distributors subsequent to the last date appearing thereon on the 2nd of May 1953?

A. Right.''

(Tr. pp. 109-110).

The effect of Civil Code Section 3440 on the transactions between Bank and Consolidated and Miller was the sole issue in the District Court. However the issue argued and decided there was not whether there had been a delivery to comply with Section 3440, but whether there had been an actual and continuous change of possession as required thereby. Section 3440 separates these two concepts as follows:

"Every transfer of personal property and every lien on personal property made by a person having at the time the possession or control of the property, and not accompanied by an *immediate delivery followed by* an actual and continued change of possession of the things transferred, is conclusively presumed fraudulent and void as against the transferor's creditors while he remains in possession . . ." (Emphasis added).

The Referee neither found nor concluded that there ad never been an immediate delivery of the scrapers nder Section 3440 from Miller to Consolidated; ather he concluded only "that there was no imme- iate [sic] or continued change of possession of said crapers from the above bankrupt to Consolidated Dis- ibutors, Inc., or any other person of a corporation, s required by Section 3440, Civil Code of the State f California . . ." (Tr. p. 16). Section 3440 says actual", not "immediate", change of possession. he Referee's failure to find that there was not an *ctual* change of possession implies, at the very least, at he concluded there was an actual change of ossession.

The only conclusion to be reached is that the ques- on of a sufficient delivery was never an issue at all d that indeed there was a delivery sufficient to sat- fy not only Civil Code Section 3014 (which Bank lieves is the only pertinent section) but also Section 40.

Once there was a delivery of the scrapers from iller to Consolidated then Bank's trust receipt ar-

rangement operated to give Bank a valid security interest in each scraper. A statement of trust receipt financing was on file with the Secretary of State (Tr p. 49).

Bank's position, sustained by the District Court was and is that its security interest in these scrapers was obtained directly from Miller, because the invoices were made out by Miller to Bank and Bank credited Miller's account with 90% of the listed value It is submitted, however, that it does not matter whether Bank's security interest came directly from Miller or from Consolidated, so long as there had been a delivery of the scrapers to Consolidated. In either case, the Bank has a valid security interest in the goods. See Civil Code Section 3014, above, at pp. 6-7 *Universal Credit Co. v. Citizens State Bank of Petersburg,* 224 Ind. 1, 64 N.E. 2d 28 (1945); *Automobile Banking Corp. v. Weicht,* 160 Pa. Super. 422, 51 A 2d 409 (1947); *In re Chappell,* 77 F. Supp. 573 (D.C Ore. 1948).

II.

BANK'S ACQUISITION OF A SECURITY INTEREST UNDER THE TRUST RECEIPTS ACT RENDERED CIVIL CODE SECTION 3440 IRRELEVANT.

In *Chichester v. Commercial Credit Co.,* 37 Cal App. 2d 439, 99 P. 2d 1083 (1940), the court held that where trust receipts are concerned, Civil Code Section 3440 is irrelevant. The court said, at page 448

> "The further contention is made that the Uniform Trust Receipts Law repeals by implication

sections 3440, 2955, 2977 and 2920 of the Civil Code, dealing in general with chattel mortgages and bulk sales. There is no merit in this contention, *for trust receipts constitute the only type of security interest which is not governed by the same laws that existed prior to the enactment of the legislation in question.* Sections 3440, 2955, 2977 and 2920 of the Civil Code are still effective and permit the use of the types of security interests therein mentioned. It is true that the questioned legislation validates a type of trust receipt transaction resembling a chattel mortgage theretofore held invalid, but no change has been made in the law relating to chattel mortgages as such. The wisdom of this change is a matter for legislative, not judicial concern.

The act itself enjoins us to so interpret and construe the act 'as to effectuate its general purpose to make uniform the law of the states which enact it'. (Civ. Code, sec. 3016.14.) This rule of construction has for its purpose the object of unifying the laws of the several states on the same subject and is therefore not to be treated as a codification of local laws or commercial customs. The fundamental purpose of the act in question should be considered in the light of the general commercial law of the country as a whole. 'The principle of the uniform act should have recognition to the exclusion of any inconsistent doctrine which may have previously obtained in any of the states enacting it.' (*Commercial Nat. Bank v. Canal-Louisiana Bank & Trust Co.,* 239 U.S. 520, 528 [36 Sup. Ct. 194, 197, 60 L. Ed. 417].) The conclusions we have reached concerning the interpretation of the law are fully in accord with

> these principles and are supported by the well reasoned opinions of the Federal District Cour and Circuit Court in the case of *In re Boswell,* 2(Fed. Supp. 748 (affirmed, 96 Fed. (2d) 239) wherein the identical issues were presented by th attack upon the constitutionality of the act.' [Emphasis added.]

In the case of *In re Nickulas,* 117 F. Supp. 59((D.C. Md. 1954), *aff'd per curiam sub nom. Tatelbaun v. Refrigeration Discount Corp.,* 212 F. 2d 877 (4t Cir. 1954), one of the issues was whether the claiman of merchandise, held by the bankrupt under trus receipts in full compliance with the Maryland Trus Receipts Act, was also obligated to see that th bankrupt had complied with Sections 18 and 20 o Article 2 of the Maryland Code. These sections pro vided that a person doing a mercantile business as a agent for another, or in a name other than his own must file in the clerk's office in the appropriate city o county a designation of the name and the address o the true owner of the business. If such agent failed t do this, any creditor could sue the debtor and sub ject any property on the premises to the satisfac tion of his claim. The bankrupt, Nickulas, was doin business as "Manor Sales" or as "Manor Sales Fu niture Store" and had not complied with the abov sections. The court held that the security interest o the entruster was protected, saying, at p. 593:

> "But more importantly I think it is to be note that the Maryland Trust Receipts Act passed i 1941 is very much later in date than sections 1

and 20 of Art. 2 enacted in 1922, and long after the decisions by Judges Soper and Coleman. *The dominant point in this case is whether the claimant has substantially complied with the requirements of this later Act.* The last section provides that 'This article may be cited as the Uniform Trust Receipts Act.' This uniform Act has been passed in many other states, by at least 29 up to 1951. It seems to have been designed to enable small business dealers, without large capital, to procure merchandise for resale and at the same time protect prospective creditors of the dealer by giving recorded notice of the particular form of financing the business. Its wide adoption by a majority of the states indicates that it has found large favor as a new form of business financing. While I am not aware of any decision in the Maryland Court of Appeals, it seems a reasonable inference that in view of its wide adoption it should be liberally applied in business matters where there has been a reasonably full and substantial compliance with the requirements of the Act. The referee himself expressed this view in another connection.

Counsel for the trustee contends that there is an obligation on the claimant to comply not only with the Trust Receipts Act but also to see that the bankrupt had complied with sections 18 and 20 of Art. 2; but my view is that the Trust Receipts Act itself dispenses with that additional requirement because section 16 provides:

'16. (Election Among Filing Statutes.) As to any transaction falling within the provisions both of this Article and of any other act requiring filing or recording, the entruster shall not be re-

quired to comply with both, but by complying with the provisions of either at his election may have the protection given by the act complied with; except that buyers in the ordinary course of trade as described in subsection (2) of Section 9, and lienors as described in Section 11, shall be protected as therein provided, although the compliance of the entruster be with the filing or recording requirements of another act.'

The purpose of the Act is to protect the entruster where he complies with the Trust Receipts Act. That Act does not require him to do more. Section 16 is seemingly to the contrary. The Uniform Trust Receipts Act is a complete and independent Act of itself and when complied with protects the 'entruster' of the goods against attack by the trustee in bankruptcy. See Coin Mach. Acceptance Corp. v. O'Donnell, 4 Cir., 192 F. 2d 773, upholding a claim of an 'entruster' who had complied with the Virginia Trust Receipts Act against the contentions of the trustee in bankruptcy based on recent amendments of the Bankruptcy Act. My conclusion is that Art. 2, §§ 1 and 20 of the Maryland Code do not apply to the instant case." [Emphasis added.]

III.

BANK IS NOT ESTOPPED TO ASSERT ITS VALID SECURITY INTEREST UNDER ITS TRUST RECEIPTS.

Appellant argues that Bank is estopped to assert its security interest in these scrapers, because the manager of Bank (or his agents) was aware that the scrapers were kept on the Miller premises. This

ot a proper case for the application of the doctrine f equitable estoppel.

The court in the case of *Safway Steel Products, nc. v. Lefever,* 117 Cal. App. 2d 489, 256 P. 2d 32 1953), summarizes what factors are necessary to reate an equitable estoppel, at p. 491:

> " 'In general, four things are essential to the application of the doctrine of equitable estoppel: first, the party to be estopped must be apprised of the facts; second, he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; third, the other party must be ignorant of the true state of facts; and fourth, he must rely upon the conduct to his injury'."

Even if we assume that Bank was apprised of the cation of the scrapers in this case, there is absolutely o testimony in the record that: (1) Bank intended at the creditors of Miller should be misled into beeving the scrapers belonged to Miller; or (2) the editors of Miller were ignorant of the true state of fairs and were in fact misled; or (3) any creditor of iller did in fact rely upon the conduct of Bank to s injury. In view of this complete lack of testimony id proof, appellant's argument based on equitable toppel is without foundation and is without merit. hese scrapers belonged to Bank, and there is no reaon either in law or in equity why Bank should be topped from asserting its ownership when there is o proof that a single creditor was misled to his detriient. While the trustee does not have to prove actual

reliance and injury on the part of creditors to void a transfer under Civil Code Section 3440, he must so prove when he seeks to invoke the principle of equitable estoppel. The law as stated in the cases is set forth in 18 Cal. Jur. 2d, pp. 404-405, where the cases are collected:

> "*Restrictive Application.* Estoppel is a harsh doctrine, and is never applied except where to allow the truth to be told would consummate a wrong to one party or enable the other to secure an unfair advantage. The defense of estoppel often means that the party against whom it is invoked is deprived of the right to prove the truth as to a matter involving a substantial right and may thereby be divested of a substantive right or property; and since, as a general proposition, the great end of judicial inquiry is to ascertain the truth, the law does not favor estoppel. *The doctrine is strictly applied, therefore, and will not be enforced unless substantiated in every particular.*" (Emphasis added.)

IV.

ASSUMING THAT CIVIL CODE SECTION 3440 IS APPLICABLE TO THESE TRANSACTIONS, THERE WAS A SUFFICIENT TRANSFER OF POSSESSION TO SATISFY THAT SECTION

Bank's position, as set forth above, is that Civil Code Section 3440 is irrelevant to this controversy. But if we assume Section 3440 is not irrelevant, then according to the cases decided thereunder, there was a sufficient "immediate [actual] and continued change of possession" to satisfy that section.

In the first place, the material facts in this case were never in dispute. Where the facts are undisputed, then this particular issue—was there an "immediate [actual] and continued change of possession" according to Section 3440—is a question of law and the upper court is not bound by the Referee's findings below. *Southern California Collection Co. v. Napkie,* 106 Cal.App. 2d 565, 235 P. 2d 434 (1951); *Weil v. Paul,* 22 Cal. 492 (1863).

In *Porter v. Bucher,* 98 Cal. 454, 33 Pac. 335 (1893), appellant lived on a farm with her husband. Appellant owned cattle and horses as her separate property which she kept on the farm. She bought from her husband hay which had been stacked in corrals without moving it to another location. Afterwards the husband was adjudicated a bankrupt and his assignee in insolvency brought a replevin action and took the hay because of an alleged noncompliance with Section 3440. The wife in turn brought this action against the assignee for conversion of the hay. The trial court held the evidence was not sufficient for a jury to find there had been a delivery or change of possession and therefore held the sale void as a matter of law. The appellate court reversed and granted a new trial, saying at pp. 459, 460:

> "Section 3440 of the Civil Code lays down no new rule as to what shall constitute a delivery. Any delivery that is sufficient to pass the title as between the parties is still sufficient, the statute only adding that it shall be 'immediate.' The expression, 'an actual and continued change of possession,' was construed in *Stevens v. Irwin,*

15 Cal. 503. It was there said: 'The word "actual" was designed to exclude the idea of a mere forma change of possession, and the word "continued" to exclude the idea of a mere temporary change but it never was the design of the statute to giv such extension of meaning to this phrase, "con tinued change of possession," as to require, upo a penalty of the forfeiture of the goods, that th vendor should never have any control over o use of them. This construction, if made withou exception, would lead to very unjust and ver absurd results.'

"The supreme court of Pennsylvania said: 'I determining the kind of possession necessary t be given, regard must be had not only to th character of the property, but also to the natur of the transaction, the position of the partie and the intended use of the property.' (*Crau ford v. Davis,* 99 Pa. St. 578).

"* * *

"* * * The code provides no different rule a to the formality of such transaction between hu band and wife, from that required between stra gers; yet the law, giving a reasonable construc tion to all such statutes, takes into consideratio not only the character of the property, but th relations of the parties and the use of the pro erty intended, and only requires that which woul naturally be done in an honest and business-lik transaction where there was no thought of frau or concealment. * * *"

Shepherd v. Gamble, 95 Cal.App. 2d 893, 214 P. 2 405 (1950), is another instance in which the cou placed a reasonable construction on Section 344

here the two defendants and the respondent (third arty claimant) were engaged in the same general ype of work, i.e., landscape gardening. All three lived n the same premises. Defendants sold their equity in used truck to respondent, who took the truck away or two months and then returned. For the next few onths respondent was out of the state, but he left ie truck at the above residence under an arrangement ith the defendants to use it for a specified rental order to help make the payments. Then the appellants (plaintiffs) attached the truck as that of the efendants. The trial court held that respondent was ie owner of the truck. Appellants contended that the ansfer was conclusively presumed to be fraudulent id void under Section 3440 because there had been o actual change of possession. The appellate court firmed, saying at p. 895:

> "To hold that such a transaction as that found by the court is conclusively presumed to be fraudulent would virtually prohibit valid sales or exchanges of movables between parties residing at and working out of the same premises. The Legislature could not reasonably have intended such iniquitous consequences."

These cases demonstrate the practical and common nse approach taken by the courts in construing ection 3440 under circumstances similar to those resent.

SUMMARY AND CONCLUSIONS.

The dealings between Bank, Consolidated and Mil ler with regard to these scrapers created a valid trus receipt transaction. Bank's acquisition of a securit interest under the Trust Receipts Act rendered Civi Code Section 3440 irrelevant. Bank is not estoppe to assert its valid security interest. Assuming, *argu endo,* that Civil Code Section 3440 is applicable t these transactions, there was a sufficient transfer o possession to satisfy that section. The applicable stat utes, cases construing them, and particularly the lib eral construction of the Uniform Trust Receipts Ac by the courts, as well as principles of equity mak clear and support the foregoing propositions.

Therefore, appellee Bank respectfully submits tha the order of the District Court must be affirmed.

Dated, Oakland, California,
September 13, 1957.

Respectfully submitted,
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